

ARCO

307 East Park Street, Suite 400  
Anaconda, Montana 59711  
Telephone 406 563 5211  
Facsimile 406 563 8269

*Henry: FYI  
Looks like S. Blodgett  
is working with those pols.  
If MWUA wants to  
talk to us it  
may be later in  
October. Thanks!*

ENVIRONMENTAL  
PROTECTION AGENCY

AUG 12 1994

MONTANA OFFICE

August 10, 1994

Ms. Barbara Stroh  
Milltown Water Users Association  
Box 187  
Milltown, Montana 59859

1282098 - R8 SDMS

Dear Ms. Stroh:

At the Milltown Water Users Association Meeting held in July 1994, your Association provided me with verbal comments to the funding agreement. Areas noted included: addition of an acronym list; additional language on water rights; striking of the "but not limited to" in the termination section; and additional language clarifying the controlled groundwater area petition. I have also enclosed a disk copy of the easement agreement for your use. The Warm Springs Ponds petition will be sent to you under separate cover.

ARCO continues to agree with the Milltown Water Users Association, MDHES and EPA that maintenance of the potable water system is critical. We will continue to work with you on these issues and look forward to a successful resolution of your concerns.

ARCO is still prepared to meet with your organization on September 1, if the Association believes it has had sufficient time to review the revised agreement. If you would like additional time to review the enclosed material, or if you have any questions please call me or Sandy Stash at 563-5211.

Sincerely,

*Robin J. Bullock*  
Robin J. Bullock  
Superfund Coordinator

cc: S.M. Stash  
R.O. Curley  
R.W. Lawrence  
J. DalSoglio\EPA  
K. Kirley\MDHES  
R. Rainney\attorney for MWUA

File:74.00.110.7

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## **WATER SUPPLY FUNDING AGREEMENT**

The parties to this Agreement are the **MILLTOWN WATER USERS ASSOCIATION** ("Association"), Box 87, Milltown, Montana 59851, and **ATLANTIC RICHFIELD COMPANY** ("ARCO"), 555 17th Street, Denver, Colorado 80202.

**WHEREAS** the Association operates and maintains a public water supply system in the Milltown area pursuant to an agreement with the Montana Department of Health and Environmental Sciences ("MDHES") to supply potable water to members of the Association;

**WHEREAS** ARCO is interested in having the Association continue to operate the water supply system in accordance with its agreement with MDHES and in compliance with applicable state and local requirements concerning public water supply systems and wellhead protection; and

**WHEREAS** ARCO is willing to fund the difference, if any, between Association revenues and operating expenses related to the operations specified in the O&M Plan and Addendum to ensure that the Association is adequately funded and a potable water supply is available to Association members until EPA's issuance of the Record of Decision ("ROD") for the Milltown Reservoir Sediments Site ("MRSS").

This Agreement is hereby made by the Association and ARCO for the purpose of funding operation and maintenance of the Association's water supply system.

### **ARTICLE I** **SCOPE OF AGREEMENT AND TERM**

1.1 Pursuant to this Agreement, ARCO agrees to: (a) provide the Association with funds that will be used solely for the purpose of operation and maintenance of the water supply system. The amount of funding shall be determined according to the procedure set forth in Article II; and (b) to fund certain capital expenditures set forth in the O&M Plan and Addendum.

1.2 Pursuant to this Agreement, the Association agrees to: (a) utilize any funds received from ARCO pursuant to this Agreement solely for the purpose of operating and maintaining, and improving the water supply system for the benefit of its members; (b) operate the water supply system in accordance with all applicable state and local requirements concerning public water supply systems, including wellhead protection requirements; (c) ~~petition, in cooperation with ARCO, to establish a controlled groundwater area under State law and support other~~ institutional controls which limit future water well development for potable use within the service area served by the Association; and (d) ensure that all Association members comply with requirements concerning the utilization of the water supply system and the limitations placed on drinking water wells established by state and/or local requirements.

**1.3** Pursuant to this Agreement, the Association also agrees to petition, in cooperation with ARCO, to establish and maintain a controlled groundwater area under State law. However, in the event that the Association and ARCO mutually agree that the groundwater within the controlled groundwater area has met and will continue to meet applicable drinking water standards, the Association may petition to modify the controlled groundwater area, provided applicable requirements for such modification under State law are met.

**1.3.1.4** This Agreement shall remain in effect until the MRSS ROD is issued by EPA. The duration of this Agreement may be modified by mutual written agreement of the parties.

## **ARTICLE II**

### **FUNDING**

**2.1** Upon execution of this Agreement, the Association will provide ARCO with a statement of the current balance of funds in its operating account. Upon receipt of the Association's statement and within sixty (60) days following execution of this Agreement, ARCO shall provide funds sufficient to raise the Association's operating account balance to \$50,000.

**2.2** Following ARCO's initial funding of the Association as described in paragraph 2.1, the dollar amount of funding provided to the Association by ARCO under this Agreement shall be determined annually as follows: On or before January 30th of each year during which this Agreement is in force, the Association shall provide ARCO a detailed accounting of the Association's operating expenses and revenues for the prior calendar year. For the purposes of this Agreement, "Operating Expenses" shall be limited to those specific operating and maintenance costs identified in the August 1985 O&M Plan and June 1993 Addendum, attached hereto and incorporated by reference as Exhibits 1 and 2. "Operating Expenses" shall not include other indirect costs and expenses which may be incurred by the Association such as attorneys' fees. The amount of ARCO's funding under this Agreement shall be limited to the difference between revenues and operating expenses plus necessary capital expenditures identified in the O&M Plan and Addendum, unless the parties mutually agree to modify this Agreement as provided for in Article III.

**2.3** ARCO shall provide the funds determined under paragraph 2.2 to the Association annually. As specified in paragraph 2.2 of this Agreement, the Association shall provide ARCO with a detailed invoice on or before January 30 of each year during which this Agreement is in force. ARCO shall pay the Association's invoice within sixty (60) days of receipt. If ARCO objects to any portion of the Association's invoice, ARCO shall notify the Association of its reasons for its objection. ARCO shall be entitled to withhold payment of any amount in dispute. The parties shall immediately make every reasonable effort to settle any disputed portion of the invoice.



### **ARTICLE III**

#### **MODIFICATION OF AGREEMENT**

3.1 This Agreement may not be modified except by written amendment executed by the authorized representatives of both ARCO and the Association.

3.2 By entering into this Agreement, the Association acknowledges that, prior to the issuance of the MRSS ROD and termination of this Agreement as provided for in Article IV, ARCO may wish to modify the form of this Agreement. In the event that ARCO desires to modify the form of this Agreement, ARCO shall notify the Association of this decision and its proposed modifications and request the Association's consent to the modification. ARCO agrees that any proposed modification to the form of this Agreement shall not alter ARCO's general obligations under this Agreement to fund the difference, if any, between the Association's revenues and operating expenses. The Association shall not unreasonably withhold its consent to such a modification.

### **ARTICLE IV**

#### **TERMINATION**

4.1 ARCO's obligation to provide funding under this Agreement shall terminate upon issuance of the MRSS ROD unless extended by mutual agreement of the parties.

4.2 ARCO shall have the right to terminate this Agreement for cause at any time by giving ten (10) days written notice of intent to terminate to the Association. For the purpose of this Agreement, causes for termination shall include, ~~but not be limited to~~ (a) the breach by the Association or any of its members of any well ban in effect in the Milltown Area; (b) failure to operate or maintain the water supply system in accordance with applicable federal, state or local regulations; (c) non-compliance by the Association or any of its members of its Water User's Agreement with the State of Montana; or (d) breach of ~~any term or condition of this Agreement.~~

4.3 The Association shall have the right to terminate this Agreement at any time by giving ten (10) days written notice of intent to terminate to ARCO in the event that ARCO fails to provide funding pursuant to the terms of Article II of this Agreement.

### **ARTICLE V**

#### **DENIAL OF LIABILITY**

5.1 By entering into this Agreement, ARCO does not acknowledge or admit that it has any legal or equitable liability under any federal, state or local statute, regulation, or ordinance or under common law for any costs, including any response costs, damages or other liability related to the MRSS or any other Superfund Site. The existence and terms of this Agreement may be disclosed by ARCO in any administrative or judicial proceeding



related to the MRSS. No payment made by ARCO pursuant to this Agreement shall be deemed to be a fine, penalty, or monetary sanction.

**ARTICLE VI**  
**OWNERSHIP OF WATER SYSTEM**

6.1 The water system, including any attendant water rights the Association may have, and the pump house, is are the sole property of the Association. By entering into and performing their obligations under this Agreement, the Association and ARCO acknowledge that ARCO will acquire no ownership interest in the water system or other obligation beyond the terms of this Agreement. Maintenance and operation of the water supply system shall remain the sole obligation of the Association.

**ARTICLE VII**  
**HOLD HARMLESS AND INDEMNIFICATION**

7.1 The Association shall hold harmless and indemnify ARCO for any liability, claims, demands, costs or actions for death, bodily injury, or property damage arising out of the performance of this Agreement whenever the liability, claim, demand, cost, action or damages are caused by or arise out of the acts or negligence of the Association, or its members, employees or agents. The Association agrees that it will defend ARCO against any claims, demands, or actions at law arising out of its performance of this Agreement, or that of its members, employees or agents.

**ARTICLE VIII**  
**MISCELLANEOUS**

8.1 The Agreement shall be subject to and governed by the laws of the State of Montana.

8.2 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

**ATLANTIC RICHFIELD COMPANY**

**MILLTOWN WATER USERS  
ASSOCIATION**

By: \_\_\_\_\_  
C. Floyd George

By: \_\_\_\_\_

### **EXHIBIT 3: LIST OF ACRONYMS**

<b>Addendum</b>	Milltown Reservoir NPL Site Milltown Water System Operation and Maintenance Manual Addendum, June, 1993
<b>Agreement</b>	Water Supply Funding Agreement
<b>Association</b>	Milltown Water Users Association
<b>ARCO</b>	Atlantic Richfield Company
<b>EPA</b>	United States Environmental Protection Agency
<b>O&amp;M Plan</b>	Milltown Reservoir NPL Site Milltown Water System Operation and Maintenance Plan August, 1985
<b>MRSS</b>	Milltown Reservoir Sediments Site
<b>MDHES</b>	Montana Department of Health and Environmental Sciences
<b>ROD</b>	Record of Decision

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This document compares:

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f:\clients\ktl\arco\Wat-Supp.AGT



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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

**ATLANTIC RICHFIELD COMPANY**

**MILLTOWN WATER USERS  
ASSOCIATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

### **EXHIBIT 3: LIST OF ACRONYMS**

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Agreement	Water Supply Funding Agreement
Association	Milltown Water Users Association
ARCO	Atlantic Richfield Company
EPA	United States Environmental Protection Agency
O&M Plan	Milltown Reservoir NPL Site Milltown Water System Operation and Maintenance Plan August, 1985
MRSS	Milltown Reservoir Sediments Site
MDHES	Montana Department of Health and Environmental Sciences
ROD	Record of Decision

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